

REMARKS

Status of the Claims

Claims 1, 5-18, 20-22 and 25-27 were pending. Claim 5 has been canceled and the subject matter of the claim has been incorporated into claim 1. Support for the amendment may be found in claim 5 and at [0067] of the published application. Claims 7, 9 and 15 have been amended to clarify antecedent basis and to correct grammar. Support for the term "sedimentation" may be found in [0018] of the published application. No new matter is added. Claims 1, 6-18, 20-22 and 25-27 remain pending.

Examiner Interview

Applicants' representative thanks Examiner White for his time and constructive discussion during the telephonic interview on January 25, 2012.

Claim Rejection under 35 U.S.C. § 103(a)

Claims 1, 5-18, 20-22 and 25-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukshpan et al. (US 2002/0198928) in view of Ravkin et al. (US 2003/0134330).

Applicants respectfully traverse the rejection. Claim 5 has been canceled, and its subject matter has been incorporated into claim 1. Further, claim 1 has been amended to specify that the sensor is moved along the flow cuvette during measurement.

The Examiner has not established a *prima facie* case of obviousness. Applicants wish to emphasize the following differences between the present claims, and the cited prior art. First, Bukshpan et al. do not disclose a flow cuvette, as required by the independent claim. Second, the Examiner has identified a deficiency in Bukshpan et al., but Ravkin et al. does not remedy this deficiency. Ravkin et al. disclose the movement of the detector from well to well, which is not the recording/scanning along the cuvette. With these deficiencies in the cited prior art, the Examiner

has not established a *prima facie* case of obviousness for the independent claim. Accordingly, the dependent claims are also not obviousness in light of the cited prior art.

The description of a fluidic system in Bukshpan et al. has been misconstrued to be equivalent to a flow cuvette. The fluidics system of Bukshpan et al. is described at [0147]. "The fluidics system 116 may include suitable fluidics elements for controllably adding or removing fluids to the sample carriers." In the present application, the flow cuvette allows a sample to flow through the cuvette (at [0048] of the published application) which implicitly includes a directional inlet and outlet to the cuvette. The fluidics system of Bukshpan et al. is not a flow cuvette; the fluidics system of Bukshpan et al. does not explicitly include an inlet and outlet, rather it allows for introduction and removal of liquids. Since Bukshpan et al. do not disclose a flow cuvette, as required by the present claims, the primary reference is deficient in this regard. The secondary reference, Ravkin et al., which relates to DNA arrays or chips, does not remedy this deficiency.

The Examiner has further acknowledged that Bukshpan et al. is silent to the aspect of the claim where the optical sensor moves alongside the "measuring cell." Ravkin et al. has been cited for the proposition that it remedies this deficiency by teaching that the detector (i.e. sensor) detects light by moving from well(s) to well(s) (see [0190][0191]). It must be noted, and emphasized that movement of the detector does not equate with the limitation found in the present independent claim: "recording the image of the suspension by an optical sensor, wherein the optical sensor is moving relative to the flow cuvette while the contents of the flow cuvette are imaged." Ravkin et al. does not disclose recording of the image while moving alongside a flow cuvette. In fact, there is no reason that one of ordinary skill in the art would believe that any recording is occurring even during the movement from well(s) to well(s); it would make no sense to record images between sample wells. Therefore, in light the Examiner's identification of the deficiency of the primary reference, and lack of remedy from the secondary reference, the Examiner has not established a *prima facie* case of obviousness.

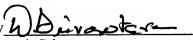
Having shown that (1) Bukshpan et al. does not disclose a flow cuvette and (2) that the deficiency identified by the Examiner in Bukshpan et al. is not remedied by Ravkin et al., Applicants respectfully request withdrawal of this rejection.

In view of the above amendment, applicant believes the pending application is in condition for allowance. If the Examiner believes that a telephone call to Applicants' representative will expedite prosecution of this case, the Examiner is invited to call the undersigned at his earliest convenience.

Should any additional fee be deemed due, please charge such fee to our Deposit Account No. 22-0261, referencing docket number 37998-237472 and advise us accordingly.

Dated: April 17, 2012

Respectfully submitted,

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